

Trust D =

Additional Trusts =

Trust D Agreement =

Loan B Litigation =

Liquidation Plan =

Motion =

Unsecured
Creditors' Committee =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

h =

i =

Dear

This letter responds to your December 2, 2011 request that we supplement our letter rulings dated July 8, 2009 (PLR-130073-09) (the “Prior PLR”), September 24, 2009 (PLR-135355-09) (the “First Supplemental PLR”), and March 2, 2011 (PLR-142024-10) (the “Second Supplemental PLR”). The information submitted in those requests is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior PLR and the First and Second Supplemental PLRs.

The Prior PLR addresses certain Federal income tax consequences of certain transactions under section 368(a)(1)(G) and certain other relevant provisions of the Internal Revenue Code (the “Code”) whereby Oldco acquired substantially all of the assets of Company and Company represented that it would liquidate (as determined for Federal income tax purposes) no later than Date 4. The First Supplemental PLR addresses certain Federal income tax consequences of certain transactions under section 368(a)(1)(F) and certain other relevant provisions of the Code whereby Newco was treated for Federal income tax purposes as the section 381 successor to Oldco. The Second Supplemental PLR addresses certain Federal income tax consequences under sections 468B, 7701, and certain other relevant provisions of the Code related to the transfer by Company of its assets to Trust A, Trust B, Trust C, and Trust D (collectively, the “Trusts”) pursuant to Company’s Liquidation Plan.

Except as modified below, the representations and material facts set forth in the Prior PLR, the First Supplemental PLR, and the Second Supplemental PLR remain in effect for purposes of this supplemental ruling.

Summary of Supplemental Facts

On Date 3, Company dissolved under State A law in accordance with the Liquidation Plan.

Representation (vv) in the Second Supplemental PLR states that it is expected that the dispute between Creditor 1 and Creditor 2, on the one hand, and the holders of general unsecured claims against Company and certain of its affiliates, on the other, regarding which parties are entitled to any proceeds resulting from the Loan B Litigation, will be resolved prior to the date that Trust D was funded, which would be no later than Date 3. Such dispute was not finally resolved prior to the funding of Trust D on Date 3.

In addition, the Liquidation Plan provided that after (i) the distributions to Trust A, Trust B, and Trust C and (ii) the distribution of the Loan B Litigation to Trust D, all remaining assets of Company (the “Other Trust D Assets”) were to be transferred to Trust D at the sole discretion of the trustee of Trust D for the sole benefit of Creditor 1 and Creditor 2. Furthermore, the Trust D Agreement provided, in part, that the trustee of Trust D may decline to accept the transfer of any or all of the Other Trust D Assets for any reason or for no reason. In such a case, the Liquidation Plan provided that such declined portion of the Other Trust D Assets were to be abandoned. Prior to the dissolution of Company, in lieu of a transfer to Trust D, the Other Trust D Assets were transferred to the Additional Trusts for the sole benefit of Creditor 1 and Creditor 2.

Further, on Date 1, representatives of Trust B filed the Motion seeking an order from the Bankruptcy Court requiring the Debtors to transfer \$h to Trust B, plus accrued interest from the Effective Date. Alternatively, in the event the Bankruptcy Court was unable to resolve the issues raised in the Motion prior to Date 2, the Motion requested that the Bankruptcy Court enter an order requiring the Debtors to deposit \$i into an escrow account pending resolution of the Motion. The Bankruptcy Court was unable to resolve the issues raised in the Motion prior to the dissolution of Company. Although the Motion requested that the Bankruptcy Court enter an order requiring the Debtors to deposit \$i into a separate escrow account pending resolution of the Motion, Company instead at the suggestion of the Bankruptcy Court (and with concurrence of Trust B) deposited \$i in cash with the Bankruptcy Court pending such resolution. The Debtors’ interest in the deposited cash was transferred to one of the Additional Trusts.

Moreover, on Date 5, the trustee and trust administrator of each of Trust C and Trust D, filed a motion (the “Trust Motion”) with the Bankruptcy Court. The Trust Motion, as later modified in court, was heard by the Bankruptcy Court on Date 6, and an order dated Date 7 was entered (the “Order”), permitting the trustee of Trust C (i) to sell an amount of Newco stock and warrants to fund accrued and anticipated fees, costs, and expenses of Trust C, and (ii) to sell an amount of Newco stock and warrants, and to transfer the proceeds thereof to Trust D, to fund accrued and anticipated fees, costs, and expenses of Trust D. Trust C will have no right of reimbursement against Trust D for any proceeds so transferred. The Order further provides that following the receipt of a supplemental ruling, the trustee and trust administrator of Trust D will seek Bankruptcy Court approval to modify the Trust D Agreement to provide that to the extent that Trust D has any assets available for distribution, an amount equal to the assets transferred by Trust C will be distributed to certain beneficiaries of Trust D.

The information in the preceding three paragraphs is hereinafter referred to as the “Supplemental Facts.”

The taxpayers request a ruling that the Supplemental Facts will not adversely affect the Prior PLR, the First Supplemental PLR, or the Second Supplemental PLR. Specifically, the taxpayers request a ruling that the Order permitting the trustee of Trust C to sell assets and transfer the proceeds to Trust D to fund certain expenses of Trust D will not cause Trust D to fail to be classified as a liquidating trust under § 301.7701-4(d) of the Procedure and Administration Regulations.

Supplemental Representations

Company makes the following representations:

- (a) Each of the Additional Trusts will qualify as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d).
- (b) Company's transfer of assets to the Trusts and the Additional Trusts manifests a bona fide elimination of Company as a corporate entity, and does not include a transaction in which substantially the same shareholders continue to utilize a substantial part of the directly owned assets of Company in uninterrupted corporate form. See *Telephone Answering Service Co., Inc. v. Commissioner*, 63 T.C. 423, 433 (1974).
- (c) Trust D is not a claimant with respect to the assets transferred to Trust C, within the meaning of Treas. Reg. § 1.468B-9(b)(3).

Law

Section 1.468B-9(d)(3)(iii) of the Income Tax Regulations provides that if a disputed ownership fund makes a distribution of money or property on behalf of a transferor to a person that is not a claimant, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to make a payment to the actual recipient.

Rev. Proc. 94-45, 1994-2 C.B. 684, specifies conditions under which the Service will consider issuing advance rulings classifying entities created pursuant to bankruptcy plans under Chapter 11 of the Bankruptcy Code as liquidating trusts and outlines the income reporting requirements for such trusts. Section 3.02 provides that a transfer to a liquidating trust for the benefit of creditors must be treated for all purposes of the Code as a transfer to creditors to the extent the creditors are the beneficiaries of the trust. The transfer will be treated as a deemed transfer to the beneficiary-creditors followed by a deemed transfer by the beneficiary-creditors to the trust. See Rev. Rul. 63-245, 1963-2 C.B. 144.

Supplemental Rulings

Based on the information submitted and representations made in the Prior PLR, the First Supplemental PLR, and the Second Supplemental PLR, as modified herein, we rule as follows:

- (1) The Supplemental Facts will not adversely affect the Prior PLR, the First Supplemental PLR, or the Second Supplemental PLR, each of which will remain in full force and effect.
- (2) The transfer from Trust C to Trust D pursuant to the Order will be treated as a transfer by Trust C on behalf of Company to certain beneficiaries of Trust D, followed by a transfer by those beneficiaries to Trust D. Those beneficiaries will

continue to be treated as the grantors and owners of Trust D (except for the Trust D Claims Reserve) under § 301.7701-4(d) and §§ 671 and 677 as set forth in the Second Supplemental PLR.

Caveats

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Matters

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Lisa A. Fuller
Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)

cc: